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ATTORNEYS FOR DEBTOR SUPERIOR AIR PARTS, INC.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>IN RE:</b>	§	
	§	<b>Case No. 08-36705</b>
	§	
<b>SUPERIOR AIR PARTS, INC.,</b>	§	<b>Chapter 11</b>
	§	
<b>Debtor.</b>	§	<b>Preliminary Hearing: March 17, 2009</b>
	§	<b>1:15 p.m.</b>
	§	

**DEBTOR'S RESPONSE TO THE MOTION FOR RELIEF FROM THE STAY  
FILED BY BAILEY/INNIS AND CHERRY/ DESCH PLAINTIFFS**

TO: THE HONORABLE COURT:

Superior Air Parts, Inc., Debtor and Debtor-in-Possession ("Debtor") responds to the Motion for Relief from the Automatic Stay filed by Henry W. Bailey, Jr. and Carole Bailey, et al and Janet L. Innis et al (Bailey/Innis) and Roxanne Cherry, et al and Toby Desch (Cherry/Desch) ("collectively Movants") to allow them to continue prosecuting their pending causes of action and exercise their respective rights and remedies as to the causes of action and in support would respectfully show:

I.

**JURISDICTION**

1. On December 31, 2008, (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “Bankruptcy Court”). The Debtor continues to operate its business and manage its properties and assets as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. An unsecured creditors committee has been appointed in the case.

2. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This Motion involves a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper with the Bankruptcy Court pursuant to 28 U.S.C. § 1408.

II.

**BACKGROUND**

4. The Debtor is a Texas corporation with its offices and operating facilities located in Coppell, Dallas County, Texas. It is one of the largest suppliers of parts under Federal Aviation Administration’s (“FAA”) Parts Manufacturer Approval (“PMA”) regulations for piston engines. It provides Superior-brand parts for engines created by two primary original equipment manufacturers (“OEMs”), the Continental division of Teledyne, Inc. and the Lycoming division of Textron, Inc. Its customers are companies that perform maintenance and overhaul work in the general aviation industry. The Debtor is also an OEM for the (i) 180-horsepower Vantage Engine and (ii) Superior or owner-built XP-360 Engine for various aircraft companies.

5. On December 30, 2008, the Debtor entered into an asset purchase agreement ("APA") with Avco Corporation ("Avco"), a wholly-owned subsidiary of Textron, Inc, wherein Avco agreed to buy substantially all of the Debtor's assets, subject to adjustments for inventory reductions. One of the conditions of the purchase agreement was that the purchase be consummated through a Chapter 11 bankruptcy proceeding. This Chapter 11 case was filed to liquidate the assets of the Debtor and to obtain the highest and best price for creditors, either through the APA with Avco, or a public auction.

6. The Bankruptcy Court approved Superior's Expedited Motion to Approve Bid Procedures for Sale of Substantially All of Debtor's Assets Free and Clear of Liens (Docket No. 43). Under the bid procedures, the auction of the Superior's assets was held beginning on February 24, 2009 and continued on February 26, 2009. At the conclusion of the auction, the Debtor rejected both the offers of two Qualified Bidders because neither was in the best interest of the Debtor, its estate and its creditors.

### **III.** **LEGAL STANDARD**

7. Section 362(a)(1) of the Bankruptcy Code provides in relevant part as follows:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title . . . operates as a stay, applicable to all entities, of-

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

8. The legislative history of section 362 of the Code indicates that Congress intended for the scope of the automatic stay to be broad to effectuate its purpose:

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 595, 95th Cong., 1<sup>st</sup> Sess. 340 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 49 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840-41, 5963.

9. The automatic stay is intended to give the debtor a “breathing spell” after the commencement of a chapter 11 case, shielding debtors from creditor harassment and a multitude of litigation in a variety of forums at a time when the debtor’s personnel should be focusing on restructuring. *See, e.g., S.I. Acquisition, Inc. v. Eastway Delivery Service, Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1146 (5th Cir. 1987). The automatic stay broadly extends to all matters which may have an effect on a debtor’s estate, enabling bankruptcy courts to ensure that debtors have the opportunity to rehabilitate and reorganize their operations. *See, e.g. Manville Corp. v. Equity Security Holders Comm. (In re Johns-Manville Corp.)*, 801 F.2d 60, 62, 63-64 (2d Cir. 1986).

10. The party seeking to lift or modify the automatic stay bears the initial burden to show cause why the stay should be lifted. In fact, “[i]f the Movant fails to make an initial showing of cause . . . the court should deny relief without requiring any showing from the debtor that it is entitled to continued protection.” *See Sonnox Industries v. Tri Component Products Corp. (In re Sonnox Industries)*, 907 F.2d 1280, 1285 (2d Cir. 1990); *Mooney v. Gill*, 310 B.R. 543, 547 (N.D. Tex. 2002); *In re Gramercy Court, Ltd.*, 2007 WL 2126493, at \*5 (Bankr. S.D. Tex. July 19, 2007)

11. The Second Circuit, in *In re Sonnax Industries*, established a number of factors to be considered in deciding whether to modify the automatic stay to permit litigation to continue in another forum including:

- (1) whether the debtor's insurer has assumed full responsibility for defending the litigation;
- (2) the interests of judicial economy and the expeditious and economical resolution of litigation; and
- (3) the impact of the stay on the parties and the balance of the harms;

See *In re Sonnax Industries*, 907 F.2d at 1286.

#### **IV. DEBTOR'S RESPONSE**

12. Although the Movants state in their motion that they seek recovery only from applicable insurance, if any, and waive any deficiency or other claims against the Debtor's bankruptcy estate property, there are no assurances by the insurance carriers that issued the applicable policies subject of the claims of the Bailey/Innis plaintiffs and Cherry/Desch plaintiffs that the insurers will assume, or have assumed, financial responsibility for defending the litigation identified in the Movants' motion.

13. The underlying policy for the Cherry/Desch claims provides for deductibles, self insured retentions, reimbursement obligations, fees and expenses and related costs that the insurance carrier has stated in its proof of claim filed in this case are the responsibility of the Debtor. Further, the insurance carrier has expressed the opinion through counsel that the Debtor's failure to assume responsibility for the payment of those items is a condition of the carrier's obligation to continue to provide a defense on behalf of the Debtor in the litigation initiated by Cherry/Desch plaintiffs.

14. The underlying policy for the Bailey/Innis plaintiffs allegedly does not contain the same obligations, deductibles and conditions. The Debtor needs to review

the policy before taking a different position with respect to the relief requested as to Bailey/Innis.

15. In the event that the insurance carrier will not confirm to the Debtor that it will assume the financial responsibility for defending the litigation and indemnifying the Debtor, despite the existence of the alleged reimbursement obligations, fees and deductibles, the Debtor may have no alternative but to file appropriate actions for a declaratory judgment to establish that such a duty and obligation exists despite its bankruptcy filing. Without the agreement of the underlying carrier or a declaration that the carrier has that responsibility, if this stay is lifted the Debtor and the bankruptcy estate will be faced with incurring unnecessary legal expense and costs of litigation associated with providing a defense. The termination of the stay to allow the prosecute of the Movants' actions would unduly burden the resources of the Debtor's estate and hamper its efforts to reorganize.

WHEREFORE, the Superior Air Parts, Inc. requests the Court deny Movants' Motion and grant the Debtor such other and further relief as is just.

Dated: March 4, 2009.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the foregoing pleading were served on the parties listed below and on the attached service list by filing the Response via the Court's electronic noticing system (ECF) to the parties receiving notice via ECF or first class U.S. Mail, postage prepaid, on the 4<sup>th</sup> day of March, 2009.

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